Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

AT&T'S *SFNPRM* REPLY COMMENTS AND COMMENTS ON THE STAFF STUDY

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
One AT&T Way, Room 3A229
Bedminster, New Jersey 07921
(908) 532-1846

John T. Nakahata
Michael G. Grable
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Suite 1200
Washington, DC 20036
(202) 730-1300

April 18, 2003

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(cont'd.)

Page

SUMMARY

The comments on the *Second FNPRM,* like the comments and reply comments that preceded them, confirm that the universal service funding system is on a steady, identifiable path to collapse. The existing revenues-based mechanism cannot be expected to continue to satisfy growing USF demands with declining interstate end user revenues; it is therefore *unsustainable.* The existing revenues-based mechanism continues to favor certain industry participants—CMRS carriers, carriers who bundle, "pure play" international carriers—while artificially inflating the costs of those carriers who seek nothing more than to compete on a level playing field; it is therefore inequitable and discriminatory. The current mechanism does not meet the requirements of Section 254(d), and cannot be lawfully continued.

The Staff Study confirms that demand for USF funding will increase and that the contribution base of end user interstate and international telecommunications revenues will decrease, even as the Staff Study understates the extent of both increasing demand (by ignoring certain increases from ILEC revenue guarantees and CETC entry policies, as well as likely increases from future policy decisions) and of a declining revenue base (by predicting overly optimistic long distance rates, ignoring the effect of bundling, and assuming that wireless contributions will be higher than is likely). Notwithstanding these flaws, the Staff Study projects that the contribution factor will have to increase 22 percent, just to cover its projected USF funding growth.

AT&T's proposal to base USF contributions on assigned telephone numbers and on the capacity of special access and private line connections is the best choice to replace the doomed revenues-based USF mechanism. It can be implemented easily and quickly. It relies on two bases (numbers and special access/private line connections) that are stable and growing

according to all available evidence, including the Staff Study. The Staff Study shows that AT&T's proposal could accommodate anticipated Fund growth with a 3 cent increase per number and special access/private line connection rather than the 22 percent jump that the current mechanism would require.

AT&T's proposal is progressive; for switched services, end users' assessments will increase only as they add telephone numbers, and the addition of numbers—particularly for wireless services—correlates strongly with income. The average-usage single-line household is clearly better off under AT&T's proposal than under the existing mechanism. According to the Staff Study, that household would pay \$0.98 in monthly USF fees under AT&T's proposal as compared with at least \$1.32 per month under the current mechanism and \$1.41 per month under the SBC/BellSouth proposal. And Lifeline customers at all interstate and international long distance usage levels are substantially better off; both the existing mechanism and the modified SBC/BellSouth proposal would require Lifeline consumers to continue paying USF fees on their long distance usage, while the AT&T proposal eliminates all USF fees for Lifeline consumers—a savings of \$9.10 on a \$100 toll bill as compared with the current mechanism.

AT&T's proposal, unlike the existing mechanism or the "hybrid" (*e.g.,* SBC/BellSouth) proposals, is competitively neutral, because it assesses all competitors providing the same service on the same basis. To illustrate, SBC/BellSouth's modified proposal would assess a three-line business customer with \$1000 in interstate long distance usage only \$4.26 if that customer bought SBC bundled local/long distance service, but \$47.13 if SBC's local customer buys long distance from AT&T. AT&T's proposal is also much more beneficial to the overall economy; economists estimate that the existing mechanism would cause \$1.25 billion in additional efficiency losses for every \$1 billion in subsidy, while AT&T's proposal would slice the efficiency loss to only $60,000 for every $1 billion in subsidy. AT&T's proposal will also face lower uncollectibles and other administrative costs than the current mechanism or "hybrid" SBC/BellSouth proposal. Finally, AT&T's proposal comports fully with Sections 2(b) and 254(d), and is further buttressed by the Commission's exclusive jurisdiction over numbering resources.

Straightforward analysis of SBC/BellSouth and other "hybrid" proposals reveals that they are just as flawed as the existing revenues-based mechanism. Despite their rhetoric, the ILECs that favor such an approach cannot obscure the inescapable fact that a "hybrid" mechanism would artificially and unfairly push high-volume long distance customers toward ILEC bundled offerings and away from standalone long distance providers. "Hybrid" proposals also ignore the lesson of the residential PICC: split-the-baby approaches that have the veneer—but not the substance—of "fairness" are bad for competition, bad for consumers, and bad for the public interest. It is telling that Sprint, the one commenting party that speaks for significant CMRS, long distance, and local operations—and therefore must balance the interests of all three sectors—agrees with AT&T that the "hybrid" proposals are as inequitable and discriminatory as is the existing system.

There is but one equitable, nondiscriminatory, sustainable, efficient and legal solution to the USF crisis. The Commission should adopt AT&T's proposal as quickly as possible.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

AT&T'S *SFNPRM* REPLY COMMENTS AND COMMENTS ON THE STAFF STUDY

AT&T files these reply comments in response to the Commission's *Second Further Notice of Proposed Rulemaking*, and comments in response to the Public Notice soliciting comments with respect to the *Wireline Competition Bureau Staff Study of Alternative Contribution Methodologies*.[1]

The *Second FNPRM* comments and the Staff Study confirm that universal service funding is on a dead-end path. The marginal improvements to the revenues-based mechanism, while correcting some of the revenues-based contribution mechanism's glaring competitive inequalities, did not substantially delay the existing mechanism's downward slide to unsustainability. None of the basic flaws with the revenues-based mechanism have been, and they simply cannot be, mended. USF funding requirements *will* continue to grow, interstate and international end user revenues *will* continue to shrink, and a revenues-based mechanism will make a complete mockery of the system's "equitable and nondiscriminatory" requirement.

Of the alternatives for reform, AT&T's proposal to base contributions on assigned numbers for switched services, and on capacity for special access and private line connections, is easily the most progressive, the most stable, and the most efficient, and the Commission can lawfully adopt it. Under no circumstances should the Commission adopt any variant of the SBC/BellSouth proposal; that "hybrid" approach is nothing more than a thinly veiled attempt to use the USF contribution mechanism to artificially push high-volume long distance customers

---

[1] *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Report & Order & Second Further Notice of Proposed Rulemaking, FCC No. 02-329 (rel. Dec. 13, 2002) ("*Interim Order*," "*Second FNPRM*," or "*Interim Order and Second FNPRM*"); *Commission Seeks Comment on Staff Study re Alternative Contribution Methodologies*, Public Notice, FCC No. 03-31 (rel. Feb. 26, 2003) ("Staff Study").

toward the RBOCs' bundled service offerings and away from the competing services of standalone long distance providers. That alternative is blatantly discriminatory.

It is clear that the hard choices can no longer be avoided. Indeed, it would be unlawful for the Commission to further delay fundamental reforms. The existing end user interstate and international telecommunications revenues-based contribution mechanism is so competitively biased—and so clearly insufficient—that it does not meet the requirements of Section 254(d).

I. THE USF CONTRIBUTION SYSTEM IS BROKEN.

Although the chorus of "Don't Worry, Be Happy" is strong from those commenters who derive a competitive advantage under the *status quo*,[2] the record unequivocally establishes that the end user interstate and international telecommunications revenues-based contribution mechanism is irretrievably broken, notwithstanding the patches applied in the *Interim Order*. The most recent round of comments confirms that the Fund is growing, the contribution base is shrinking, and the inequitable and discriminatory shelters for wireless services, for bundled services, and for international services continue to skew contributions and competition. The interim changes to shift to contribution based on projected, collected revenues and to increase the wireless safe harbor, although reducing to some degree the competitive inequity in the existing system, do not address the fundamental unsustainability of the existing mechanism, nor do they place the existing system on an equitable and nondiscriminatory foundation. The record compels the Commission to conclude that the existing system itself violates Section 254(d), and cannot lawfully be continued.

[2] *See* Allied National Paging Ass'n Comments at 5-7; Arch Wireless Comments at 4-5; Concerned Paging Carriers Comments at 4-11; CTIA Comments at 2-3; j2 Global Comments at 3-6; Montana Independent Telecommunications Systems Comments at 5-6; NTCA Comments at 2; TracFone Comments at 8-9. Unless otherwise noted, all cites to party comments are to comments filed on or about February 28, 2003, in response to the *Second FNPRM.*

A. The Existing Mechanism Is Unsustainable.

The Commission cannot continue to ignore the stark facts that demand for universal service funds continues to grow unabated while the revenues-based contribution mechanism struggles to meet that demand by squeezing ever-more money out of an ever-declining contribution base.

1. The Fund will continue to grow.

No commenting party disputes that the Universal Service Fund has grown steadily, is growing, and will continue to grow. To the contrary, those commenters who mention the size of the Fund urge the Commission to address its "runaway growth."[3] The Staff Study confirms that the Fund will continue to grow; indeed, even in the absence of policy-based increases, the Staff Study projects a 16 percent increase in USF funding between 2003 and 2007.[4]

Moreover, this forecast most likely understates the growth, because the Staff Study does not appear to account for the upward pressure on rural high-cost loop, local switching and interstate common line support ("ICLS") mechanisms that results from the ILEC revenue-guarantees built into those mechanisms and the fact that competitive eligible telecommunications carrier ("CETC") entry simply adds to the amount of support provided by these mechanisms, without reducing ILEC support.[5] The Staff Study also does not consider the impact of continued

---

[3] *See, e.g.*, ACUTA Comments at 3.

[4] *See* Staff Study at 5: Projected Assessments under Revenue-Based Methodology.

[5] These upward pressures on the Fund resulting from the combination of ILEC revenue guarantees and CETC entry would have been mitigated (but not eliminated) if the Commission had adopted the RTF proposal to cap per line HCL support upon CETC entry into a study area. *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers & Interexchange Carriers*, Fourteenth Report & Order, Twenty-Second Order on Reconsideration, & Further Notice of Proposed Rulemaking in CC Docket No. 96-45, & Report & Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11294 (¶ 123) (2001).

support for multiple lines to a household, especially as growing numbers of wireless carriers receive CETC certification and wireless service itself becomes more widespread.[6] USAC has reported that wireless CETCs received approximately $55 million in USF funds in 2002,[7] and Nextel recently filed for CETC status in several states.[8] Although the Commission and the Joint Board are now awaiting comment with respect to the question of whether universal service support should be limited to a single connection to a household or single-line business,[9] unless the Commission so limits universal service support, universal service will *de facto* be defined as a telephone connection to every person and every household, and the USF will mushroom accordingly.

[6] Since 1997, when the FCC last considered the issue of whether support should be limited to primary lines, wireless subscribership has grown by nearly 100 million subscribers. *See* CTIA's Semi-Annual Wireless Industry Survey Results June 1985-Dec. 2002.

[7] *See* Letter from Linda J. Miller, USAC, to Marlene H. Dortch, FCC, in WT Docket No. 02-381 (filed Mar. 25, 2003), at 2.

[8] *See Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners*, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed Apr. 3, 2003); *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners*, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, CC Docket No. 96-45 (filed Apr. 3, 2003); *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners*, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Apr. 4, 2003).

[9] *Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (¶ 9) (2002) (referring certain issues regarding ETC designation to the Joint Board) ("*ETC Referral Order*"); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 2003 FCC LEXIS 667, CC Docket No. 96-45, FCC 03J-1, *to be published at* 18 FCC Rcd 1941 (rel. Feb. 7, 2003) (seeking comment on the Commission's referral of ETC designation issues) ("*ETC Notice*") (collectively, "*ETC Designation Proceeding*").

In addition, policy-based changes are likely to increase the size of the Fund. The Joint Board Recommended Decision on Lifeline/Link-up[10] projects that its proposed income-based eligibility criteria—135 percent of federal poverty guidelines—could increase USF support by $105 million to $123 million in 2004.[11] In the future, intercarrier compensation reform may also put additional upward pressure on the Fund. In addition, if the Commission were to expand the definition of supported services in the future, the Fund could increase substantially.[12]

All of these factors suggest that the Staff Study, while commendable, has presented a "best case" scenario on Fund growth over the next five years: one that depends on the FCC taking aggressive steps to limit potential sources of uncontrolled growth and that assumes there will be no further policy-based increases to the Fund.[13]

2. The contribution base will continue to shrink.

The record overwhelmingly demonstrates that the interim changes are not sufficient to stabilize the Universal Service Fund, particularly in light of anticipated growth. Nor is including cable modem revenues and all ADSL revenues the magical silver bullet, irrespective of the merits of such a policy. More fundamental changes to the universal service contribution mechanism are necessary.

---

[10] *See Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 03J-2 (rel. Apr. 2, 2003).

[11] *Id.* at ¶ 10.

[12] AT&T agrees with the Joint Board's decision to limit high-cost support to the currently defined set of local services. *See Federal-State Joint Board on Universal Service; Review of the Definition of Universal Service*, Comments of AT&T Corp., CC Docket No. 96-45 (filed Apr. 14, 2003), *passim*. Any change in the definition of supported services would have to meet the statutory criteria in Section 254(c).

Parties across the spectrum have independently reached the conclusion that the revenues-based mechanism relies on outdated regulatory distinctions and will suffer from increasing erosion that is exacerbated by the mechanism itself. SBC and BellSouth, for example, note that "inevitable and irreversible" "market developments are 'increasing the strain' on the regulatory distinctions, such as interstate/intrastate and telecommunications/non-telecommunications, that determine the universal service contribution base. ... [T]hese strains have continued to increase" as the Commission has delayed USF reform during the past year.[14] NRTA and OPASTCO agree that concerns about the sustainability of universal service support are "well-justified" because "overall end-user switched interstate telecommunications revenues, which the contribution base presently relies upon, are now on the decline."[15] USTA cites "the fear of erosion of the base upon which universal service contributions are made as new services that may not be subject to universal service contributions are being substituted for those previously subject to universal service contributions and as existing services that are subject to universal service contributions may be re-classified as no longer subject to universal service contributions."[16] And WorldCom rightly concludes that "[a] substantial part of the decline in reported wireline long distance usage and revenues most likely reflects continued consumer

[13] For a more detailed analysis of the Staff Study, see "Technical Comments on the Staff Model and Assumptions," appended hereto as Exhibit 1.

[14] SBC/BellSouth Comments at 2. On the other hand, SBC and BellSouth are perfectly content to rely on outmoded regulatory distinctions when such distinctions work to their competitive advantage. *See* Section IV, *infra*.

[15] NRTA/OPASTCO Comments at 12-13; *see also id.* at 14 ("The gradual but ever-growing use of broadband platforms and IP networks plays a significant role in the present instability of the contribution base.").

[16] USTA Comments at 3.

substitution of email, instant messaging, Internet transactions (in lieu of toll-free calling), and—most of all—wireless long distance service for wireline long distance service."[17]

The Staff Study confirms that the contribution base will decline. According to the Staff Study, the total contribution base will decline from a peak of approximately $80 billion in 2003-04 to less than $77 billion in 2007.[18] But just as it understated the likely Fund size, the Staff Study appears to have significantly overestimated the interstate revenues contribution base.

First, the Staff Study assumes that residential toll prices will be constant beginning in January 2004, and average only a 2.5 percent annual decline in 2003.[19] These assumptions are optimistic, particularly in light of the continued emergence of "all-you-can-eat," any distance packages. Similarly, the Staff Study assumes that business switched toll rates will decline an average of 4.5 percent annually in 2004, and 3 percent annually beginning in January 2005. These business toll rate assumptions also seem optimistic. If the Staff Study's assumptions of future long distance prices do not hold, the total contribution base of end user interstate and international revenues will drop even lower than the Staff Study indicates, and the contribution factor will rise even higher. To illustrate, if the rate of price decreases in residential and business switched toll markets for January 2003 are assumed to continue through the end of 2007, the revenues-based contribution factor would be 9.8 percent in 2004 (a 20-basis-point increase over the results published in the Staff Study), and 12.2 percent in 2007 (an 80-basis-point increase

[17] WorldCom Comments at 9.

[18] *See* Staff Study at 5: Projected Assessments Under Revenue-Based Methodology.

[19] The description in the Staff Study Public Notice at 16, describing price assumptions for residential toll prices, states that rates remain constant after January 2005. However, this appears to be an error in the Public Notice.

over the results published in the Staff Study), assuming no other variances from the FCC's default assumptions.

Second, the Staff Study does not appear to take into account any declines in the revenue base due to lower "interstate" allocations within bundled products. Shifting revenue allocations within bundles to assign more revenue to intrastate or unregulated services and less revenue to interstate services would be a direct response to the high revenues-based contribution factors, would further accelerate the decline of the contribution base, and is more likely to occur as the contribution factor continues to move higher. Because business services are frequently procured through contractual negotiations for a wide variety of services, including intrastate and unregulated services, this migration of revenue from interstate to other jurisdictional categories could especially affect projected special access/private line revenues, which are shown as growing in the Staff Study, business switched revenues, which the Staff Study already projects to be declining substantially, and multiline business subscriber line charges. However, the effects of bundling on reported interstate revenue extend to the mass-market sector as well. TNS Bill Harvesting data show that, at the end of 2002, 27 percent of households were obtaining their wireline long distance services bundled with local service, a nearly 70 percent increase over the percentage of households with bundled local and long distance service at the start of 2001.[20] While the migration of revenues to intrastate and non-regulated portions of the bundle is not expressly modeled by the Staff Study, these effects are mimicked by assuming a more substantial price decrease for all these services than the Staff Study assumes, which, as discussed above with respect to switched toll revenues, could be substantial.

---

[20] *See* "Household Trend in Bundling and De-PIC Behavior, 1Q01-4Q02," appended hereto as Exhibit 2.

Third, the Staff Study assumes that, with the commercial mobile radio service ("CMRS") "safe harbor" set at 28.5 percent, CMRS carriers will allocate 22.3 to 22.4 percent of their total telecommunications revenues to the "interstate" category.[21] This, however, is also likely to be overly optimistic. Because the Commission has not provided any guidance on how wireless carriers should conduct traffic studies, including the timeliness of the data used and basic design parameters, and because the Commission has permitted wireless carriers to recover universal service contributions by applying a carrier-specific factor to the customer's bill, irrespective of actual interstate usage,[22] it is likely that the actual proportion of CMRS telecommunications revenues reported as interstate will be lower—approximately 20 percent, according to AT&T's expectation.[23] The difference between CMRS interstate-allocated revenues of 22.3-22.4 percent

---

[21] *See* Staff Study at 5 ("Note").

[22] The Commission has allowed CMRS carriers to recover contributions on an averaged basis regardless of actual customer interstate usage, and therefore more CMRS carriers will allocate based on their own traffic studies rather than the safe harbor. *See Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, & Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing & Speech Disabilities, & the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan & North American Numbering Plan Cost Recovery Contribution Factor & Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing & Billing Format*, Order & Order on Reconsideration, FCC 03-20 (rel. Jan. 30, 2003) ("*Wireless Clarification Order*"), at *11 (¶ 8).

[23] The FCC's preliminary report of Form 499-Qs filed for the Fourth Quarter 2002 shows wireless carriers reported 23.3 percent of revenue as interstate. *See* Industry Analysis & Technology Division, Wireline Competition Bureau, *Telecommunications Industry Revenues 2001*, Table 16 (rel. Mar. 20, 2003). However, the Commission is not using Fourth Quarter 2002 data for any universal service contribution calculations, and the data was also reported at approximately the same time that the Commission adopted its reconsideration order permitting wireless carriers to apply a company-specific factor in calculating USF recovery fees, irrespective of actual interstate usage. *See Wireless Clarification Order* at ¶ 8. Thus, the Fourth Quarter 2002 percentage of CMRS revenue reported as interstate may not be representative of actual reporting under the existing contribution mechanism.

and 20 percent is significant, given the magnitude of total wireless revenues, and would increase the projected contribution factor by approximately 20 basis points in 2003, and by 40 basis points by 2007 (for a contribution factor of 11.8 percent in 2007).

Moreover, the Staff Study highlights the extent to which the Commission's decisions in the *Wireline Broadband Internet Access Framework NPRM*[24] may exacerbate the demise of, but will not rescue, the existing revenues-based contribution mechanism. If the Commission, in that proceeding, decides to exclude the existing contribution from ADSL from the base of end user interstate and international telecommunications revenues, the contribution factors projected by the Staff Study will be even higher, reaching 10.4 percent in 2004 and approximately 12.7 percent in 2007.[25] If, on the other hand, the Commission decides to include all cable modem and ADSL revenue in the contribution base, it will temporarily increase end user interstate and international telecommunications revenues before the contribution base again begins declining at the start of 2005—sooner if the Staff's other assumptions prove rosy. The Staff Study dispels the myth that broadband revenues are the magical elixir that will cure the sustainability ills of the existing contribution mechanism.

In addition, these sources of possible overestimation are cumulative, not offsetting. Thus, the record establishes that the contribution base will continue to shrink under any scenario. When combined with anticipated continued Fund growth—which likely substantially exceeds the

---

[24] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("*Wireline Broadband Internet Access Framework NPRM*").

projections in the Staff Study—there is now clearly no way to retain the existing end user interstate and international telecommunications revenues-based contribution system while avoiding a "death spiral" of ever increasing contribution factors and an ever-diminishing contribution base. *It is apparent that the contribution factor could easily move above 14 percent in only a few years, unless the contribution mechanism is changed.* In order to meet Section 254(d)'s requirement that universal service support be sufficient, a new contribution mechanism is needed.

B. The Existing Mechanism Is Inequitable and Discriminatory.

The existing revenues-based contribution methodology, as modified in the *Interim Order*, is neither competitively nor technologically neutral, and it also is not adaptable to new technologies or new service offerings. As Sprint correctly observes, the existing contribution mechanism "continues [to] carve[] out particular categories of service providers to which the USF burden does not apply, while subjecting other carriers to significant USF costs."[26] By itself, this renders that existing contribution mechanism unlawful.

1. The wireless safe harbor remains inequitable and discriminatory.

Other parties confirm that the existing revenues-based mechanism discriminates in favor of wireless services. Sprint, which has significant CMRS, long distance, and local operations—and therefore must internally balance the interests of all three sectors—agrees with AT&T that

[25] This assumes that wireless carriers allocate 20 percent of their telecommunications revenues to interstate telecommunications, and that business and residential switched toll prices do not decline more rapidly than assumed in the Staff Study.

[26] Sprint Comments at 4.

the existing system is broken and that a numbers-based contribution mechanism would be more rational and sustainable.[27] WorldCom accurately summarized the *status quo*:

> [T]he new safe harbor of 28.5% continues to understate wireless interstate revenues significantly. This results in a mechanism that discriminates in favor of wireless carriers and against the wireline carriers with whom they compete in the provision of long distance services. Moreover, this systemic discrimination will only worsen if, as is likely, wireless interstate traffic continues to grow as a percentage of total wireless traffic, and, as experts have predicted, wireless traffic increasingly substitutes for wireline traffic.[28]

SBC and BellSouth concurred with this assessment, concluding that "[t]he Commission has reduced, but by no means eliminated, the disparate treatment of wireline and wireless service providers …."[29]

No wireless carrier refutes the basic fact that the safe harbor, along with the permission given to wireless carriers to levy recovery charges in accordance with the safe harbor or their company-specific traffic studies rather than in accordance with actual customer usage,[30] gives wireless carriers an enormous competitive advantage when competing for high-volume long distance customers—an advantage that stems solely from the USF contribution mechanism. Competitive neutrality cannot be judged in terms of aggregate percentage contributions, but must be judged in terms of the effect on competition for particular customers. In other words, simply because a particular wireless carrier may have 20 percent aggregate interstate traffic and therefore contributes to USF based on 20 percent of its total revenues, it does not follow that the

---

[27] *See id.* at 4.

[28] WorldCom Comments at 15-16.

[29] SBC/BellSouth Comments at 8.

[30] *See* AT&T Petition for Reconsideration in CC Dockets Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 & 98-170 (filed Mar. 13, 2003), at 5-10.

contribution mechanism is competitively neutral.[31] What makes the wireless safe harbor, and indeed, the entire wireless contribution mechanism, not competitively neutral is the effect of the contribution mechanism on the incentive for a consumer to place incremental interstate traffic over a wireless carrier versus a wireline carrier. As AT&T demonstrated in its initial comments, the wireless carrier has a clear, universal service-based competitive advantage in competing for incremental interstate traffic.[32] At the current 9.1 percent contribution factor, AT&T pays 9.1 cents in USF support for every additional $1 that AT&T's customers spend on interstate long distance calls, but a CMRS carrier contributes, at most, 2.6 cents for handling the same $1 worth of traffic.[33]

Certain wireless carriers' attempts to preserve the existing mechanism can only be attributed to their inherent competitive advantages under that system. Nextel, for example, urges the Commission "to stay the course" by maintaining a revenues-based system with a generous wireless safe harbor, but at the same time wants "the Commission [to] be as flexible as possible in" allowing CMRS carriers to use whatever methods and assumptions they choose in their traffic studies.[34]

---

[31] This example ignores the non-inclusion of a wireless equivalent to the interstate subscriber line charge ("SLC"), which is a further source of competitive inequality.

[32] AT&T Comments at 22-23 (explaining why a wireline carrier pays up to three and a half times the universal service contribution that a wireless carrier would pay for the same volume of interstate traffic at the same price).

[33] AT&T's contribution is $1 times the 9.1 percent contribution factor, or $0.091. The maximum CMRS contribution is $1 times the 28.5 percent safe harbor times the 9.1 percent contribution factor, or $0.026.

[34] Nextel Comments at 21, 24. Nextel's support for the existing mechanism as the best alternative to its preferred elasticity-based contribution mechanism is also intellectually incoherent. *See* n.90, *infra*.

In fact, much of the CMRS opposition simply defies reality. Arch Wireless, for example, wholly ignores the overwhelming record evidence of falling interstate wireline long distance revenues in asserting, "nothing has occurred which makes the FCC's rejection of non-revenue based approaches any less a good decision now than it was five years ago…."[35] Five years ago, the FCC asserted the authority to assess intrastate, as well as interstate and international revenues for USF contribution purposes, a position since rejected by the Fifth Circuit.[36] Five years ago, both interstate usage and interstate revenues were increasing, the USF was substantially smaller, bundling was much less prevalent, wireless had not evolved into as much of a direct competitor with wireline long distance services, and VoIP was not yet dawning. There have, in fact, been substantial marketplace changes that mandate that the Commission adopt a new contribution mechanism.

2. The Commission has no equitable and nondiscriminatory means of addressing bundling.

Bundling presents a growing and unavoidable challenge to the existing end user interstate and international telecommunications revenues-based mechanism: how do you determine, in an equitable and nondiscriminatory manner, the proportion of a bundle's revenues that should be assigned to interstate service, as opposed to intrastate or unregulated service? Proponents of the existing mechanism either refuse to answer this question or propose elaborate, expensive, and inefficient artifices.[37] And, to date, the Commission has done "nothing to address the problems

---

[35] Arch Wireless Comments at 5.

[36] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 446-448 (5th Cir. 1999) ("*TOPUC I*").

[37] The California PUC, for example, proposes that the Commission establish contributions for bundled services based on "periodic traffic studies" for each bundled option that a carrier offers to end users. California PUC Comments at 8.

caused by bundled service offerings."[38] Yet bundling cannot be ignored; as stated above, 27 percent of households now receive their local and long distance service from the same provider, and "growing trends of bundling interstate telecommunications services with intrastate services, information services, and customer premises equipment will make it more and more difficult to determine interstate telecommunications revenues in a fair and consistent manner."[39]

AT&T also agrees with Sprint's observation that carriers who offer a bundle of services will not necessarily offer each component of the bundle separately; "in such cases, there is simply no way to allocate the bundled price to USF-subject services."[40] Even when separate component prices exist, of course, it will still be "extremely difficult and costly for the Commission" to ensure that carriers are not improperly skewing revenues away from the interstate component.[41] In the end, "[a]s the practice of bundling accelerates, and as carriers characterize smaller portions of their bundled services as 'interstate and international telecommunications,' the decline in the universal service assessment base will also accelerate."[42] The Commission must discard the revenues-based mechanism in favor of a numbers-based mechanism.[43]

---

[38] SBC/BellSouth Comments at 7.

[39] Qwest Comments at 3.

[40] Sprint Comments at 6.

[41] *Id.*

[42] WorldCom Comments at 13.

[43] As discussed in Section I.B.1, *supra*, if bundling and true price declines reduce revenue per minute for business and residential switched toll service for 2003 through 2007 at the same rate of decline as the Staff assumes occurred in January 2003, the contribution factor would increase by 20 basis points in 2004, and 80 basis points in 2007. The increase in the contribution factor would be sharper if revenue per minute declines more quickly.

Verizon attaches to its comments a detailed "white paper" that purports to describe how the FCC could identify the interstate telecommunications portion of service bundles.[44] It is not clear why Verizon believes that allocators will work better for wireline bundles than they have for wireless bundles, particularly in markets where technologies are converging. As demonstrated in Section I.B.1, *supra*, the wireless safe harbor may treat all wireless carriers the same with respect to their bundle of intrastate and interstate calling, but it does not create competitive neutrality between wireless as a platform for long distance service and wireline as a platform for the same service. All of Verizon's specific suggestions are competitively biased. For example, Verizon suggests attributing the full tariffed rate for local service to intrastate, leaving the remainder for allocation to interstate in a local/interstate bundle.[45] Of course, this approach assigns the entire discount to interstate, and thus reduces interstate revenue for the bundler. Verizon suggests creating statewide or nationwide PIU factors, which will favor whichever company has more actual interstate usage than the PIU factor assigns and competitively harm a carrier with less actual interstate traffic than the mandated factor.[46] Verizon also argues, "Most, if not all firms offering long distance can provide individual call detail to their customers."[47] Yet Verizon Wireless and the rest of the wireless industry—all of who are "firms offering long distance"—recently told the Commission that they could not do so and could not therefore assess universal service recovery on the basis of actual usage, and the Commission relied on that representation.[48]

---

[44] "How to identify interstate revenues in bundled offerings," *attached to* Verizon Comments.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *See Wireless Clarification Order* at ¶ 8.

It is clear that the only way to continue to apply an end user interstate and international telecommunications revenues-based mechanism is through a series of artificial, hyper-regulatory and competitively biased allocators that cannot hope to meet Section 254(d)'s requirement that contribution be equitable and nondiscriminatory. The Commission can only address the emerging marketplace phenomenon of bundling by shifting to a new contribution mechanism that does not require the development of such allocators.

3. The partial international exemption continues to be inequitable and discriminatory.

As the Coalition for Sustainable Universal Service ("CoSUS") explained in comments in response to the *Further Notice of Proposed Rulemaking*, filed almost precisely one year ago, the partial "international exemption" is discriminatory because it exempts from universal service obligation the international end user telecommunications revenues of a very specific category of carriers; that is, carriers whose interstate end user revenues are less than twelve percent of their combined interstate and international end user revenues. While these "pure play" international carriers pay no universal service assessment on their international end user telecommunications revenues, carriers with greater interstate revenues are subject to a percentage contribution assessment for the same traffic.[49] This partial exemption skews international competition in favor of "pure play" providers, which can provide international services without contributing to

[49] *See* CoSUS *FNPRM* Comments at 34-35; *see also Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Further Notice of Proposed Rulemaking & Report & Order, 17 FCC Rcd 3752 (2002) ("*FNPRM*"), at ¶¶ 123-26.

universal service, and, therefore, without charging a now 9.1 percent universal service recovery surcharge.[50]

The Commission could end the marketplace discrimination caused by this partial exemption by excluding all international revenues from the contribution base. That "solution," however, would simply accelerate the erosion of the contribution base, the growth of the contribution factor and the speed of the universal service "death spiral." As a result, the partial international exemption cannot be reconciled with the Act's requirements that the contribution mechanism be equitable, nondiscriminatory, and sufficient.

C. Section 254 Precludes Continued Use of the Revenues-Based Mechanism.

As AT&T has repeatedly demonstrated, the existing mechanism is inequitable, discriminatory, and unsustainable. Accordingly, the Commission is statutorily compelled to change the mechanism in order to comply with Section 254. As SBC and BellSouth put it, the "contribution disparities create competitive distortions and affect end user purchasing decisions, which violates section 254 and the public policy principle that the universal service program should *not* be a competitive factor in the market."[51] The Commission can no longer lawfully ignore the flaws in the existing mechanism.

II. A NUMBERS-BASED MECHANISM IS WORKABLE, SUSTAINABLE, PROGRESSIVE, COMPETITIVELY NEUTRAL AND EFFICIENT.

In contrast with the existing contribution mechanism, AT&T has submitted a detailed proposal for a universal service contribution mechanism that is workable, sustainable and competitively neutral. This mechanism would assess a uniform, per-number assessment on all entities that provide North American Numbering Plan ("NANP") telephone numbers to unique

[50] *See* CoSUS *FNPRM* Comments at 35.

end users, and would assess special access and private line connections according to the capacity of that connection to the public network. Unlike the existing mechanism, AT&T's proposal is built on a foundation that will grow, not shrink, and it does not favor particular providers or providers that bundle services over those that do not. Moreover, AT&T's proposed contribution mechanism would distribute the contribution burden among the ultimate payors—end users—in a manner that is progressive, while minimizing deadweight consumer welfare losses.

A. AT&T's Proposed Numbers-Based Mechanism Addresses Commenters' Alleged Implementation "Deficiencies."

A number of commenters opposed to a per-number assessment have thrown a slew of alleged deficiencies at the wall, hoping that one of them will stick. Variously, they assert that a per-number assessment for switched services would be deficient because:

- Interexchange carriers are exempted from contribution;[52]
- Toll-free numbers are not included;[53]
- A carrier porting numbers would be assessed instead of the carrier to whom the number is ported, which is the carrier with the end user customer relationship;[54] and
- "Intermediate" numbers provided to "non-carrier" entities would be problematic.[55]

---

[51] SBC/BellSouth Comments at 3.

[52] *See, e.g.*, SBC/BellSouth Comments at 18, 19.

[53] *See, e.g.*, *id.* at 19 n.25.

[54] *See, e.g.*, *id.* at 22; California PUC Comments at 28.

[55] *See, e.g.*, SBC/BellSouth Comments at 20.

AT&T, however, specifically addressed each of these concerns in its proposed numbers and special access-private lines connections-based contribution mechanism. Specifically:

- "Interexchange carriers," to the extent that there are carriers that provide only interstate toll service, without providing local exchange or special access/private line service, are not exempt from contribution. These carriers must pay contribution on any numbers they assign to unique end user customers, including toll-free numbers that are often sold by interexchange carriers for personal 800 services.[56]
- Toll-free numbers, 500 and 900 numbers, and distinctive ring numbers would all be subject to universal service contribution, irrespective of whether they are reported in NRUF reports.[57]
- Ported and resold numbers would be reported for universal service purposes by the carrier to whom the number is ported, or that provides the resold service to the end user, and not by the carrier from whom the number is ported or from whom the resold service is obtained.[58] This is consistent with Sprint's suggested treatment of such numbers,[59] and treats numbers that CLECs provide to end users similarly, regardless of whether the number is a ported number.
- Problems of intermediate numbers would be eliminated because the number reporting responsibility for universal service purposes would be on the entity

[56] *See* AT&T Comments at 5-6.

[57] *See id.* at 5.

[58] *Id.* at 6-7.

[59] *See* Sprint Comments at 17.

(including an ISP) that provides the number to end users.[60] Notably, a non-carrier that provides numbers to end users would have an incentive to provide accurate information to the carrier provider of numbers in order to avoid imposition of a USF recovery fee by the carrier provider.

In addition, in its initial comments, AT&T laid out the specific process contributors would use for filing a 499-Q with projections of the total number of assessable numbers and special access-private line connections, as well as projected uncollectibles.[61] On this basis, USAC would propose, and the Commission would set, the per number or special access-private line connection rate. There would be no need for a circularity adjustment, as under today's rules, but there would be a true-up, as under the existing mechanism, to reconcile projected, collected assessable numbers and special access/private line connections with actual carrier results.[62]

B. AT&T's Proposed Numbers/Special Access-Private Line Connections-Based Mechanism Is Clearly Superior to the Alternatives.

The record clearly demonstrates that AT&T's proposed contribution mechanism based on assigned numbers for switched services and connections and capacity for special access and private line services will be sustainable. Not only will the contribution base under this proposal

[60] AT&T Comments, Exhibit 1: Proposed Revised Rules, at 1. Proposed rule 54.706(b) states:

> Every other entity that provides an end user with an assigned number or that provides a reportable end user interstate or international special access or private line connection to a public network for a fee on a non-common carrier basis shall contribute to the federal universal service support mechanism as set forth in sections 54.709-54.713.

[61] *See id.* at 7.

[62] *See id.* Alternatively, the Commission could require contributors to report assigned numbers and special access/private line connections monthly, with an allowance for uncollectibles, and to remit contribution on that basis. This approach would reduce administrative costs associated

continue to grow, but also it will be less susceptible to erosion from VoIP services than the existing mechanism. Moreover, there is neither a need nor a basis for equivalencies between low-bandwidth paging connections and higher bandwidth CMRS connections, or between Centrex connections and PBX-based connections. Finally, the record clearly establishes that a numbers-based mechanism is progressive and will be the most efficient means of contribution assessment, minimizing deadweight economic losses.

1. The Staff Study confirms that numbers/special access-private line connections will continue to grow.

The Staff Study confirms that AT&T's proposed contribution base of assigned telephone numbers and special access-private line connections will continue to grow, creating a stable and sustainable base for universal service contribution. The Staff Study estimates that the total of assigned telephone numbers and special access-private line connections, using the *SFNRPM*'s proposed capacity tiers, will grow by approximately 2.7 percent per year from 2003 through 2007.[63] This growth in the numbers/special access-private line connections contribution base contrasts dramatically with the Staff's projected continued shrinkage in the existing base of end user interstate and international telecommunications revenues.[64]

The impact of a growing base of numbers/special access-private line connections versus a shrinking base of end user interstate and international telecommunications revenues is dramatic. The Staff Study projects that the entire nearly 16 percent growth in USF program requirements from 2003 to 2007 under existing program mechanisms (approximately 3.61 percent growth per

---

with a true-up mechanism for forecasted assigned numbers and special access/private line connections.

[63] *See* Staff Study at 9.

[64] *See id.* at 5 (projecting that end user interstate revenues will peak at $80.2 billion in 2004 and then decline steadily to $76.76 billion by 2007).

year) can be accommodated with less than $0.03 growth in the per number/DS-0 special access-private line connection assessment rate.[65] By contrast, the Staff Study projects that the revenues-based contribution factor will have to increase 22 percent over the same period to accommodate the same projected Fund growth.[66] And the true increase in the revenues-based contribution factor necessary to accommodate the Staff's projected Fund growth is likely to be even higher because, *inter alia*, the Staff Study substantially overestimates the percentage of total telecommunications revenues that the CMRS industry will allocate as interstate.[67]

Furthermore, the Staff Study understates the likely growth, and therefore stability, of a numbers/special access-private line connections-based contribution mechanism. The Staff expressly assumes that 15 percent of switched business lines in 2007 will be served by broadband without use of telephone numbers.[68] The Staff itself characterized this assumption as "conservative" and stated that this assumption was included "primarily to test the robustness of the proposed methodologies."[69] The Staff Study shows that the numbers/special access-private line connections-based methodology is robust against even a substantial business migration to numberless VoIP in lieu of switched, numbered services. However, this level of migration to numberless VoIP is unlikely to occur. VoIP offerings in the market today, such as those offered by Vonage, show that VoIP users still want to have a telephone number that will allow them to be reached from the public switched telephone network ("PSTN"). Moreover, businesses today obtain DID numbers or individual Centrex extensions so that their users can directly receive calls

---

[65] *See id.* at 8.

[66] *See id.* at 5.

[67] See Section I.A.2, *supra*.

[68] *See* Staff Study at 13.

[69] *Id.*

from the PSTN, without requiring those calls to be handled by an operator or requiring the caller to enter an additional extension number. It is unlikely that, so long as the per number assessment fee remains modest, businesses will want to make it harder for their customers and business contacts to reach them by giving up the convenience of DID or individually numbered Centrex lines.

Moreover, the Staff Study is particularly conservative in its projection of special access and private line connection growth (weighted by FCC proposed tiers to DS-0 equivalents), projecting that these connections will grow at only about 2.87 percent per year from 2003 to 2007.[70] AT&T believes that a more reasonable, conservative estimate of special access and private line growth, based on 2001-2002 data, would be approximately 10 percent growth per year.[71] At that rate of growth, total assessable units, including all numbers and special access-private line connections, would grow at approximately 3.40 percent per year, or only slightly slower than the total USF, as projected by the staff. This would mean that AT&T's proposal could accommodate the 16 percent growth in the Fund from 2003 to 2007, with virtually no change in the per number assessment rate.

Finally, although the Staff Study includes a backstop 1 percent gross revenues assessment, the elimination of that unnecessary feature would not alter the stability of a numbers/special access-private line connections-based mechanism such as AT&T proposes.

---

[70] By contrast, the Staff Study appears to project the special access and private line revenues will grow an average of 6.2 percent per year.

[71] Non-switched special access lines (voice grade equivalents) of all reporting ILECs grew from 70.5 million in December 2000 to 85.8 million in December 2001 – an annual growth rate of 21.5%. Industry Analysis Division, Wireline Competition Bureau, *Statistics of Common Carrier, 2001-2002 edition*, Table 2.6 (rel. Sept. 15, 2002). AT&T examination of RBOC preliminary 2002 special access line data from ARMIS confirms that double-digit growth

2. Neither VoIP nor ENUM will threaten a numbers-based mechanism.

Fears that a numbers-based mechanism will be unable to adapt to the emergence of VoIP or the coming of ENUM[72] are unfounded. As discussed above, the marketplace behavior of VoIP providers such as Vonage shows that VoIP users will generally want to have a 10-digit NANP number in order to allow them to be reached by other PSTN users. The 10-digit NANP number is the address necessary for a caller to be reached from an ordinary telephone, which will continue to be the predominant PSTN device for years to come.

The Michigan PSC—one of whose members, Commissioner Robert Nelson, is also a member of the North American Numbering Council—affirms this view. Refuting the concern that new technologies will cause the use of numbering resources to decline, the Michigan PSC concludes that "two emerging telecommunication services, VoIP and ENUM, utilize the 10-digit numbering system. By instituting a telephone number based contribution equation, all telecommunications technologies and services which utilize the NANP will be contributors to universal service."[73]

3. A numbers/special access-private line connections-based mechanism will be progressive.

The Staff Study also demonstrates that a numbers/special access-private line connections-based mechanism will be progressive, because it will assess more in contributions from users

---

continued in 2002. *See* "ILEC Special Access Lines – Non-Switched Analog and Digital," appended hereto as Exhibit 3.

[72] ENUM is a protocol designed by the Internet Engineering Task Force (IETF) to map a particular telephone number to a particular domain name address. Information on ENUM is available at <http://www.itu.int/osg/spu/enum/>.

[73] Michigan PSC Comments at 7. AT&T does not endorse the Michigan PSC's characterization of VoIP and ENUM as "telecommunication services." It is not clear that the Michigan PSC intended to use the term "telecommunications service" in its statutory sense. However, that characterization is immaterial to the point made by the Michigan PSC.

that have multiple PSTN addresses (*i.e.*, 10-digit telephone numbers) that can be reached across state lines than it will assess from users that have only a single telephone number and switched line. For switched services, users' total universal service assessments increase only as they add telephone numbers.

According to the Staff Study model, without the 1 percent minimum gross revenues contribution and without favoritism among numbers (*i.e.*, no discount for paging or Centrex), in 2004, a residential consumer with only one telephone number and a presubscribed connection to a long distance carrier would pay approximately $0.98 per month in universal service assessments.[74] This assessment will be the same regardless of the amount of interstate long distance usage.

The one-line household with average interstate usage is clearly better off under AT&T's proposed numbers/special access-connections-based contribution mechanism than under the existing system. Under the existing revenues-based mechanism, the Staff Study shows that this same household, with average monthly interstate usage of 55 minutes, would be assessed approximately $1.32 ($0.56 in LEC assessments, and $0.76 in long distance carrier assessments) per month in 2004.[75] This total USF assessment for a single-line household with average monthly interstate usage will be even higher if, *inter alia*, the Fund increases faster than the Staff has projected, long distance switched toll revenues per minute continue to decline faster than the Staff Study assumes (whether from price decreases or bundling shifts), wireless carriers allocate to interstate telecommunications revenues less than the 22.3 to 22.4 percent that the Staff has

[74] All other variables not specifically discussed are unchanged from the Staff Model default values for Option 3. AT&T estimates that, if special access and private line connections grow at approximately 10 percent per year, rather than at 2.87 percent per year as the staff assumes, the per number assessment rate under AT&T's proposal will be closer to $0.96.

projected, or if the Commission excludes ADSL revenues from the contribution base. If, for example, switched toll revenue per minute continues to decline at the January 2003 rates projected by the Staff, wireless carriers allocate 20 percent of total telecommunications revenues to interstate, and there are no other increases in the Fund beyond the Staff projections, the contribution factor would be 10.1 percent in 2004, and this one-line, average-interstate-usage household would pay a total of $1.39 in universal service assessments per month in 2004 ($0.59 in LEC assessments, and $0.80 in long distance carrier assessments). If, in addition, the Commission decides to exclude ADSL revenues from the contribution base, the Staff Study predicts that the contribution factor for 2004 will be approximately 10.7 percent, for a total contribution for this one-line household of $1.46 per month ($0.62 in LEC assessments, and $0.84 in IXC assessments). Under this last scenario, by 2007, even with no increases in the Fund that exceed Staff assumptions, the contribution factor would be nearing 14 percent.

There will, of course, be some one-line residential consumers who will pay slightly higher USF assessments under the per-number system than under the existing revenues-based mechanism. The difference, however, is small: less than 36 cents per month for a truly zero-volume user in 2004, according to the Staff Study, with continued January 2003 declines in switched toll revenue per minute, wireless interstate allocation of 20 percent and excluding ADSL revenues from assessment.[76] If this one-line consumer makes $3.37 or more in interstate long distance calls, whether presubscribed or using prepaid calling card telecommunications

---

[75] *See* Staff Study at 5.

[76] $0.98 per number assessment minus $0.62 in LEC revenues-based assessment using the Staff Study with continued January 2003 declines in switched toll revenue per minute, a wireless allocation of 20 percent and excluding ADSL revenues from the contribution base = $0.36.

services, she will be better off under a numbers-based assessment mechanism.[77] Moreover, as the USF increases and end user interstate and international telecommunications revenues decrease—and thus the contribution factor rises—the number of these customers that would face slightly higher USF assessments under the AT&T proposal than under the existing mechanism would continue to fall. The Staff Study projects, for example, that under this same scenario, the contribution factor in 2007 will be 13.8 percent, which translates to a LEC USF assessment alone of $0.81 for a single residential line.

The consumer impact simulation for average and low-volume users submitted by Consumers Union, *et al.*—when corrected to include a LEC universal service fee and revised to reflect the contribution factors projected under the Staff Study using a 20 percent wireless allocation to interstate and continued decreases in switched toll revenues per minute at January 2003 levels—shows that some low-use customers will be better off under the AT&T proposal while no low-use consumer is worse off under the AT&T numbers-based mechanism by more than $0.28 per month (assuming ADSL stays in the contribution base) or $0.24 per month (assuming ADSL is excluded from the contribution base).[78]

Moreover, as the Commission is well aware, it is simply not true that low-volume consumers are generally low-income. As Chairman Powell has observed, there is a reason to be skeptical about "whether 'low volume consumers' constitute some type of protected class."[79] He

---

[77] $0.36 (*see* n.75, *supra*) divided by the 10.7 percent projected contribution factor for 2004 = $3.37, meaning that $3.37 or more in interstate long distance calling will cause a consumer to pay more than $0.98 in USF assessments under the existing mechanism.

[78] *See* "Analysis of USF Fees in 2004 for Low-Use and Average-Use Customers," appended hereto as Exhibit 4.

[79] *Low-Volume Long Distance Users*, Notice of Inquiry, Separate Statement of Commissioner Michael Powell, 15 FCC Rcd 6298, 6319 (1999).

noted correctly, "[o]ne might be misled to believe that low volume consumers are poor, elderly or rural individuals. In some cases yes, but by no means does low volume necessarily correlate with these groupings for which the government often accepts some social responsibility."[80] He further observed, "wealthy parents whose kids and family live locally may be low volume consumers."[81] Furthermore, as AT&T has previously demonstrated in this docket, residential consumers are, by and large, not consistently low volume. A zero-volume user in one month may have substantial usage in another month.[82]

All of this demonstrates that Consumers Union, *et al.* are simply wrong when they melodramatically cite the "fixed incomes" and "difficult financial choices" facing elderly persons.[83] Indeed, the opposite is the case; it is the existing revenues-based system that will lead to difficult financial choices for low-income Americans and cause difficult financial choices, not a numbers/special access-private line connections-based mechanism.

Take, for example, a low-income elderly person who runs up a $100 long distance bill talking to a terminally ill sibling in another state. Under the existing mechanism, in 2004, she will face not only a $100 long distance bill but likely at least $10 or so[84] in additional federal universal service recovery assessments. This additional $10+ fee could actually cause difficult

---

[80] *Id.*

[81] *Id.*

[82] *See Zero-Volume Long Distance Customers*, appended to the CoSUS *FNPRM* Comments as Attachment 3 (filed Apr. 22, 2002).

[83] Consumers Union, *et al.* Comments at 8.

[84] Even without any adjustments, the Staff Study projects that the contribution factor will be 9.6 percent in 2004. As a consequence, a customer with a $100 interstate toll bill would pay $9.60 in long distance carrier universal service fees, and another $0.56 in LEC universal service fees, for a total of $10.16 in universal service fees. *See* Staff Study at 5. If the customer is a Lifeline subscriber, she would not be billed the $0.56 LEC fee.

financial choices. By contrast, under the AT&T proposed numbers/special access-private line connections-based proposal, if this elderly customer is a Lifeline subscriber, she would pay no universal service recovery fee because Lifeline customers would be exempt from the per-number assessment. Even if this customer were not a Lifeline subscriber, she would still only face a USF assessment fee of $0.98 from the carrier that provided her telephone number. That fee is at least $9.18 less than she would face under the existing revenues-based mechanism.

Under AT&T's proposal, as customers add more numbers-based services, their USF assessments would rise. The reason the Staff Study shows that the average monthly pass-through charge per household is slightly higher in 2004 under a numbers-based plan (Option 3) than under a pure connections-based plan (Option 1) is because the staff assumes there are 0.30 more telephone numbers per household than there are residential wireline and mobile wireless connections. These appear to be numbers associated with distinctive ring, personal 800 and personal fax services. Increasing a household's universal service assessments as the household increases its discretionary use of these additional telephone numbers is progressive. AT&T's numbers-based mechanism is made further progressive because wireless telephone subscription correlates strongly with income. As households add wireless telephones in addition to (but not in substitution for) their landline phones, the total household universal service assessment will increase.

The Staff Study also demonstrates that the original SBC-BellSouth proposal (Option 2), and the similar Qwest proposal,[85] are clearly less favorable to a one-line residential household that presubscribes to long distance service than is the AT&T proposal. Under the original

[85] Qwest Comments at Attachment A. Qwest's proposes an access and transport per connection assessment for switched services, with a hybrid connections/revenues assessment for special access and private line services.

SBC/BellSouth proposal (as well as under its modified proposal for a residential consumer that selects the same provider for local and long distance service), and under the Qwest proposal, the Staff Study projects that the one-line residential consumer would pay $1.41 per month in 2004. This is substantially more than the $0.98 per month that would be assessed under AT&T's numbers/special access-private line connections-based proposal. Moreover, the SBC/BellSouth proposal is worse on average for residential households taken as a whole.[86]

SBC/BellSouth's modified proposal would also be bad for the high-volume, low-income consumer who subscribes to a standalone long distance service or uses dial-around. Take, for example, the low-income elderly woman discussed above who runs up a $100 long distance bill calling her sister. While it is difficult to estimate the percentage of revenue assessment that would be applied to the non-vertically integrated carrier, even if this contribution factor were 4 or 5 percent, the low-income elderly consumer would still be assessed $4 to $5 in USF fees, plus a LEC fee of approximately $0.71. Moreover, as SBC and BellSouth have previously acknowledged, because long distance carriers would assess this $4 to $5 in USF fees, it would still be assessed even if this customer were a Lifeline subscriber.[87]

4. A numbers/special access-private line connections-based mechanism will be competitively neutral.

No commenter identifies any systemic competitive bias in a numbers and special access-private line connections-based contribution mechanism. All entities that provide switched

---

[86] Staff Study at 7-8.

[87] Letter from Jamie M. (Mike) Tan, SBC, to Marlene Dortch, Federal Communications Commission, in CC Docket No. 96-45 (filed Oct. 11, 2002), at 6 ("The Commission's existing Lifeline program applies only to local service and does not include interstate long distance services. Accordingly, LECs should not contribute on access connections provided to Lifeline customers and there is no reason to create any contribution exemption for IXCs that applies to Lifeline customers.").

services will contribute on the basis of whatever telephone numbers they provide to their end user customers, regardless of whether the company is an historical IXC, an historical LEC, uses CMRS technology, uses Internet protocol, or bundles its services with other services. Similarly, all providers of special access and private line connections will contribute on the basis of those connections' capacity without regard to the identity of the connection provider or the services provided over the connection. As Ad Hoc states, "there is no reasoned basis for discrimination or 'deal-making.'"[88]

Those commenters that assert that IXCs are exempted from a numbers-based assessment are simply wrong.[89] To the extent that there are any "IXCs" that provide only interexchange service, and provide no local or special access/private line service, such companies would be assessed on all of their assigned telephone numbers, which includes the personal toll free numbers uniquely assigned to a specific end user that many carriers offer. Although carrier NRUF reports do not include toll-free numbers, as discussed in Section II.A.1, *supra*, nothing in AT&T's proposal excludes these numbers from the contribution base.

Nextel appears to argue that any universal service mechanism will be discriminatory if it does not take into account the relative inelasticity of demand of the provider.[90] Nextel in essence argues that the requirement of "equitable and nondiscriminatory" contributions means that universal service contributions must be assessed strictly in accordance with Ramsey pricing principles. While this is an elegant economic theory, it would be wholly unworkable, as the Commission would have to develop both sound estimates of the elasticity of demand for each of

[88] Ad Hoc Comments at 3.

[89] *See*, *e.g,*, California PUC Comments at 23; Nextel Comments at 15.

[90] *See* Nextel Comments at 20.

the services provided over the PSTN, and then develop a way to be responsive to changes in those elasticities as markets converged or differentiated. The requirement that universal service be "equitable and nondiscriminatory" is not so narrow that it encompasses only an elasticity-based contribution mechanism, without regard to the fact that such a mechanism is wholly unimplementable.[91] A simpler understanding of "equitable and nondiscriminatory" is appropriate: from the standpoint of a consumer purchasing services, does the contribution mechanism, in its actual implementation, assess contribution on the same basis to all contributors providing the same service? AT&T's assigned numbers and special access-private line connections-based mechanisms passes this test. Both the existing mechanism, as discussed in Section I.B, *supra*, and the SBC/BellSouth proposal, as discussed in Section IV, *infra*, flunk.

None of the paging carriers articulates any coherent reason why a numbers-based assessment for switched services would not be competitively neutral as applied to paging carriers. Arch Wireless asserts that a numbers-based assessment must be related to the capacity of the connection used to deliver the numbers-based service.[92] But this assertion is fundamentally misguided; the numbers-based assessment is a fee for the use of a PSTN address at which a provider's customer can be contacted by other PSTN users, including those out-of-

---

[91] Nextel itself does not appear to believe its own argument that the statute requires contribution to be based upon relative elasticities of demand. First, Nextel argues that the existing revenues-based mechanism approximately assessments based on demand inelasticity. *See* Nextel Comments at 20. Nextel then argues that if an inelasticity-based mechanism cannot be developed, the existing mechanism should be maintained. *Id.* at 24. In fact, however, the existing mechanism is anti-Ramsey pricing, assessing the greatest contribution from interstate long distance service, which is the most elastic service, rather than assessing the greatest contribution on the most inelastic service. Although CMRS may have more elastic demand than wireline local exchange service (a differential that will erode as more consumers use CMRS as a substitute for wireline local exchange service), CMRS is clearly less elastic than long distance service: CMRS carriers provide long distance service, but wireline long distance carriers cannot provide mobile service.

state. It is not a capacity-based assessment on connections. Under AT&T's proposal, connections are only assessed for non-switched facilities that do not use telephone numbers. In arguing (without any supporting data or economic analysis) that they would be adversely impacted by a numbers-based assessment,[93] the paging carriers ignore the fact that the same per-number assessment will be assessed on all providers that assign numbers to a specific end user, including all other paging companies and all companies that provide substitutable products. Paging carriers have failed to demonstrate that a uniform, per-number assessment on all assigned telephone numbers would not be competitively neutral.

AT&T's proposed assessment for switched services based on assigned telephone numbers is also competitively neutral between traditional fax and e-fax services, and between traditional paging and "unified messaging" services. Providers of each of these services would be assessed based on the number of assigned numbers provided to a unique end user. The contribution mechanism would not distinguish based on the nature of the provider's underlying business plan or the technology used to deliver the service. All that would matter is the fact that the provider assigns a number to be the unique user's PSTN address. It would not be competitively neutral to grant j2's request for a special exemption for "unified messaging" from numbers-based assessment, nor is there any justification for doing so.[94] These "unified messaging" and e-fax providers obtain a PSTN address precisely so that their users can be reached from the ubiquitous PSTN, including across state lines, and these providers are clearly consuming numbering resources.

---

[92] Arch Wireless Comments at 10.

[93] *See, e.g.*, Metrocall Holdings Comments at 9; WebLink Wireless Comments at 5-7.

[94] *See* j2 Comments at 9-10.

In its initial comments, AT&T observed that its proposed numbers-based assessment for switched services would assess prepaid and subscriber-based wireless services on a competitively neutral basis: whether they had an assigned number dedicated to the use of an end user.[95] Virgin Mobile appears to recognize this when it concedes that a numbers-based assessment "could serve as a useful collection model."[96] A numbers-based assessment would also avoid the need for the Commission to determine a usage-equivalency ratio between subscription-based and prepaid CMRS services, as would be necessary with a connections-based mechanism.

AT&T's proposed numbers-based assessment for switched service also would not discriminate between prepaid wireless service providers and prepaid long distance service providers.[97] A prepaid wireless service provider offers something that the prepaid long distance provider does not—an assigned telephone number (*i.e.*, a unique address on the PSTN)—and its service is assessed on that basis. However, the prepaid long distance user will place her prepaid long distance call over a facility that is assessed universal service for an assigned telephone number. Thus, from a functional perspective, users of both services are assessed the same amounts: both pay a numbers-based assessment to the provider of the telephone number, and nothing to the provider of services used from that telephone number, regardless of whether the provider of the telephone number is the same as or different from the provider of the services

---

[95] *See* AT&T Comments at 32.

[96] Virgin Mobile Comments at 18. Virgin Mobile asserts that a contribution must collect an "equitable assessment with respect [to] each sector's revenues from interstate traffic." *Id.* at 17. As discussed in Section III.C.3, *infra*, Virgin Mobile's reading of the statute is incorrect.

[97] *See* TracFone Wireless Comments at 19.

used from that telephone number. AT&T's proposal therefore adheres to, and does not depart from, competitive neutrality.

There is nothing competitively neutral about adopting a favorable assessment rate for payphone numbers.[98] Payphone numbers are unique PSTN addresses, and they consume numbering resources. The Commission should eschew such pleas for special consideration. Likewise, there is also no competitive neutrality-based rationale for adopting a different assessment rate for Centrex numbers than for DID numbers provided through a PBX.[99] As AT&T pointed out in its initial comments, competitive neutrality is achieved by assessing the numbers associated with either service.[100]

5. A numbers/special access-private line connections-based mechanism will be efficient.

Just as WorldCom points out with respect to a pure connections-based contribution mechanism,[101] a numbers/special access-private line connections-based mechanism is much more economically efficient than the existing revenues-based mechanism or the SBC/BellSouth proposal, and maximizes social welfare by minimizing deadweight economic loss. As the Ad Hoc Committee has noted, the existing system of assessing USF contributions is economically inefficient because it effectively seeks to recover non-traffic sensitive costs—the bulk of costs supported by universal service mechanisms—on a usage-sensitive basis.[102] This

[98] APCC Comments at 18.

[99] *Cf.* USTA Comments at 8 (supporting a separate connections tier for Centrex).

[100] *See* AT&T Comments at 33-34.

[101] *See* WorldCom Comments at 22-23.

[102] Ad Hoc Comments at 7.

inefficiency is especially acute given that carriers generally recover their universal service contributions in fees set as a percentage of the customer's bill.

An article authored by Jerry Hausman, an economist who frequently testifies on behalf of RBOCs, and former FCC Chief Economist Howard Shelanski highlighted the inefficiency of the existing mechanism. Hausman and Shelanski estimated that for every $1 billion of universal service support collected through long distance rates, the U.S. economy will suffer *an additional* efficiency loss of $1.25 billion.[103] By contrast, Hausman and Shelanski demonstrated that the additional efficiency loss from an increase in end user charges is *de minimis*. They estimated that a $1 increase in an end user charge (which is more than would result in 2004 under the AT&T proposal) caused an additional $0.0006 in additional efficiency losses, or approximately $60,000 for every $1 billion in subsidy.[104] There is no question that assessing universal service contributions based on assigned telephone numbers and special access-private line connections, as AT&T has proposed, will be more economically efficient than the existing mechanism.

In addition to distorting customers' purchasing decisions, the existing revenues-based universal service assessment imposes deadweight administrative costs. It is far more difficult to identify assessable telecommunications revenues than assigned telephone numbers and special access-private line network connections. For one thing, every provider of any telecommunications service must determine whether each and every service it offers is an assessable interstate or international telecommunications service, or a non-assessable service.

---

[103] J. Hausman & H. Shelanski, *Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Universal Service Subsidies*, 16 YALE J. REG. 19, 43 (1999) ("*Hausman/Shelanski*"), *cited in* WorldCom Comments at 22-23. The average efficiency loss, as opposed to the marginal efficiency loss, was approximately $650,000 for every $1 billion in subsidies. *Id.* n.54.

[104] *Hausman/Shelanski*, 16 YALE J. REG. at 45.

Moreover, the transaction costs of billing and recovering universal service contributions are imposed on a far broader range of transactions under a revenues-based assessment mechanism than on a numbers- and connections-based assessment mechanism.

Furthermore, AT&T's proposed mechanism will be much more efficient in collecting universal service contributions than the existing revenues-based mechanism because the contribution mechanism will be subject to a much lower overall uncollectible rate. The FCC Form 499-Qs filed for the first two quarters of 2003 show that LEC and wireless telephony uncollectible rates are substantially below those of interexchange carriers; for the second quarter of 2003, ILECs projected 1.9 percent uncollectibles,[105] wireless telephony providers projected 2.8 percent uncollectibles, and interexchange carriers projected 4.3 percent uncollectibles. This 499-Q data shows that the uncollectible rate under AT&T's proposal will be substantially below the 4 percent rate assumed in the Staff Study, and below the uncollectible rate for the current mechanism, which is more heavily influenced by the higher uncollectible rate for interexchange carriers. Reducing the overall uncollectible rate for the universal service contribution mechanism makes it more efficient, and reduces the overall assessment rate.

The AT&T proposal is also far more efficient than the SBC/BellSouth proposal, both in its original form and even more so in its latest modified form, which also incurs substantial deadweight administrative costs. Indeed, the modified SBC-BellSouth proposal perpetuates all of the deadweight administrative costs of the revenues-based mechanism for any provider of standalone long distance service (but notably not for SBC and BellSouth), without the benefit of

[105] *See also* Verizon Telephone Cos., Tariff Transmittal No. 252, Description & Justification, Appendix B at 3 (filed Oct. 15, 2002).

eliminating the administrative costs of multiple assessments on the same customer as would flow from a numbers-based mechanism or reducing the overall uncollectible rate.

III. THE COMMISSION CAN LAWFULLY ADOPT AT&T'S PROPOSED NUMBERS/SPECIAL ACCESS-PRIVATE LINE CONNECTIONS-BASED MECHANISM.

Several commenters argue that Congress expressly precluded the Commission from adopting a universal service mechanism such as AT&T proposes. These parties too narrowly construe the Commission's Section 251(e) numbering jurisdiction and misread Section 254 as compelling a revenues-based assessment mechanism. Indeed, if these parties were correct (and they are not), the only contribution mechanisms that the Commission could adopt would be either based on gross revenues or structured like a value-added-tax. The word "revenues," however, never appears in Section 254(d), and the Act is not as narrow as these parties would suggest.

A. The Commission's Numbering Resources Jurisdiction Supports a Numbers-Based Mechanism.

Commenters support AT&T's view that Section 251(e) provides jurisdiction to implement a numbers-based mechanism. The Michigan PSC endorses a numbers-based mechanism as "a straightforward, easy to implement concept with the reward of encouraging conversation efforts,"[106] and adds that "[t]he FCC, with its plenary authority over the NANP, has the jurisdiction to implement [a numbers-based mechanism]."[107] Ad Hoc similarly concludes that "[b]ecause Section 251(e)(1) clearly gives the Commission jurisdiction over intrastate

---

[106] Michigan PSC Comments at 3.

[107] *Id.* at 7.

aspects of numbering resources, the FCC is empowered to use telephone numbers as the basis for a telecommunications providers' contribution obligations."[108]

Arguments to the contrary—such as that Section 251(e) is limited to number planning, management, and allocation,[109] or that it does not provide authority for a numbers-based USF mechanism that would promote number conservation and efficient number utilization[110]—misconstrue both Section 251(e) and the concept of numbering resource management and administration. Verizon Wireless is wrong when it asserts[111] that a numbers-based fee to support USF does not fall within the Commission's exclusive jurisdiction over NANP numbering resources. Section 251(e) grants the Commission "exclusive jurisdiction over those portions of the North American Numbering plan that pertain to the United States."[112] In *NYPSC v. FCC*,[113] the United States Court of Appeals for the Second Circuit noted that the Act did not define either "numbering administration" or "North American Numbering Plan," and held that the Court would defer to the Commission's reasonable interpretation of those terms.[114] As the Commission has recognized, the NANP "erects a framework for assigning the telephone numbers upon which ... services depend ...."[115] Administration of the NANP includes ensuring

[108] Ad Hoc Comments at 8.

[109] *See* Verizon Wireless Comments at 19-22.

[110] *See* California PUC Comments at 25-26.

[111] *See* Verizon Wireless Comments at 19-22.

[112] 47 U.S.C. § 251(e)(1).

[113] 267 F.3d 91 (2d Cir. 2001).

[114] *Id.* at 103.

[115] *Administration of the North American Numbering Plan*, Report & Order, 11 FCC Rcd 2588, 2591 (¶ 4) (1995).

that adequate numbers will be available.[116] A numbers-based fee that encourages number conservation plainly is a mechanism of administering the supply of numbers, and this falls within the Commission's Section 251(e) jurisdiction.

Verizon makes the facially implausible claim that there is no conservation effect from a numbers-based fee. That is incorrect. Basic economics teaches that a numbers-based fee will encourage providers to consider the number of telephone numbers they will consume when deciding how to structure and provide a service. E-fax and "unified messaging" providers, for example, will now have an economic incentive to conserve numbers and to manage their use efficiently. The same is true for other providers.

AT&T's proposal also would not assess charges "disproportionately on the fastest growing users of numbers," contrary to the Commission's concerns with respect to a numbers fee proposal in 1995.[117] AT&T proposes to assess the per number fee on all providers of switched services, not just on newly issued numbers, thus ensuring that all providers that use numbers will be assessed without any disproportionate burden.

B. Section 2(b) Is Not a Bar.

Although several commenters repeat their argument that a numbers-based (or CoSUS-type) mechanism would violate Section 2(b),[118] this argument wholly lacks merit. First, not one of these parties even cites the D.C. Circuit's decision in *NARUC v. FCC*, which upheld the creation of an interstate subscriber line charge ("SLC") by the FCC.[119] In *NARUC*, several parties had challenged the Commission's authority to implement the SLC, and argued—as they

[116] *See id.*

[117] *Id.*

[118] *See, e.g.*, Verizon Wireless Comments at 19-22.

do here—that a PSTN connection's theoretical ability to make or receive interstate calls was an insufficient basis for a federal charge on such connections.[120] The D.C. Circuit disagreed, finding that PSTN connections include an interstate component, and therefore that Section 2(b) does not bar federal assessments on the interstate portion of those connections.[121]

The *NARUC* case forecloses Section 2(b) objections to AT&T's proposal. For the purposes of Section 2(b) analysis, no difference exists between the SLC and a numbers-based USF contribution assessment. At a minimum, a number is issued so that an end user can receive telephone calls, including interstate calls. Even if the end user has outgoing toll block, her number can be used to receive interstate calls, as well as to originate interstate calls using calling cards, dial-around accounts, collect calling, third-party billing, or toll-free calls. Actual interstate usage was not dispositive in *NARUC*, and it is not dispositive here. The basis for both the SLC and the numbers-based assessment is the interstate *capability* of the line. It is this interstate capability that permits a flat-rate charge to be assessed without violating Section 2(b).

NYPSC v. FCC, likewise, establishes that Section 2(b) does not limit Section 251(e)'s grant of exclusive FCC jurisdiction over numbering resource administration, regardless of the extent to which administering numbering resources overlaps with "areas of intrastate service."[122] In *NYPSC*, the Second Circuit determined that Section 251(e) authorized the Commission to override the New York Public Service Commission's orders and decide, at the federal level, how many digits must be dialed by New York City end users to reach other New York City end

[119] 737 F.2d 1095 (D.C. Cir. 1984).

[120] *Id.* at 1113-14.

[121] *See id.*

[122] *See id.* at 102.

users.[123] Thus, Section 2(b) does not preclude the FCC from assigning a fee to telephone numbers as a number administration tool.

Finally, as CoSUS explained repeatedly,[124] *TOPUC I*[125] is not on point. In *TOPUC I*, the Fifth Circuit struck down an FCC contribution mechanism that was expressly based on intrastate revenues in addition to interstate revenues.[126] What the Fifth Circuit objected to was that the interstate assessment could affect the usage of the intrastate service (such as intrastate toll service).[127] In contrast, AT&T's proposed mechanism does not in any way implicate the revenues of an intrastate service that is wholly unrelated to the ability to place or receive an interstate or international call from a telephone number. Therefore, it does not run afoul of *TOPUC I.*

C. Section 254(d) Is Not a Bar.

The Commission once again has been presented with two irreconcilable interpretations of Section 254(d): One says that Section 254(d) does not prohibit the adoption of a numbers-based (or connections-based) mechanism, and the other argues that Section 254(d) only permits contribution mechanisms that measure "interstate activity." The latter interpretation, proposed by proponents of the unlawful *status quo*, as well as by SBC/BellSouth, construes Section 254(d) in a manner that is inconsistent with both the present mechanism and the SBC/BellSouth

---

[123] *Id.* at 109.

[124] *See* CoSUS *FNPRM* Comments at 93-97; CoSUS *FNPRM* Reply Comments at 55-57; Attachment 1 to Letter from John T. Nakahata, Harris Wiltshire & Grannis LLP, to Marlene Dortch, FCC, in CC Dockets Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 03-31 (filed Aug. 22, 2002), at 8.

[125] *See* CoSUS *FNPRM* Comments at 93-97.

[126] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999) ("*TOPUC I*").

[127] *See id.* at 447.

proposal. The better interpretation of the statutory language is that the Commission may adopt a numbers-based mechanism.

1. The only coherent way to read Section 254(d) is as a whole.

As AT&T (and CoSUS before it) have explained, the only coherent way to read Section 254(d) is as an integrated whole. As WorldCom recognizes, Section 254(d) requires that the Commission create an equitable and nondiscriminatory formula for universal service contributions, that the formula must apply to all telecommunications carriers that provide interstate telecommunications and may apply to other providers as well, and that the Commission may exempt some providers from contribution if the amount of their contribution would be *de minimis*.[128]

This reading harmonizes all portions of Section 254(d), and does not add additional terms to the statute that are not there. Under this interpretation, the first sentence of Section 254(d) prescribes a process, not a payment result. As Congress reflected in its Statement of Managers accompanying and explaining the Conference Report, it expected the Commission to adopt a "formula for contributions" to universal service.[129] Each "carrier that provides interstate telecommunications services" must then contribute the amount called for by the formula established by the Commission's rules. That formula must be applied to every carrier, and it is of paramount importance that the Commission's contribution formula be "equitable and nondiscriminatory" and that it be a "specific, predictable and sufficient … mechanism[]."[130] If the Commission's "equitable and nondiscriminatory basis" (*i.e.*, its formula) yields a

[128] *See* WorldCom Comments at 25-30.

[129] H.R. Rep. No. 104-458 (1996), at 131.

[130] 47 U.S.C. § 254(d).

contribution for a particular carrier that is too small, the Commission can waive collecting entirely.

This interpretation is consistent with Commission precedents applying Section 254(d). In its 1996 NPRM, the Commission sought comment on four different bases for contributions: gross revenues; gross revenues net of payments to other carriers for telecommunications services (also called "net telecommunications revenues"); per line; and per-minute.[131] The Joint Board recognized that "the statute does not expressly identify the assessment base for the calculation of the contribution."[132] When the Commission adopted the existing interstate and international end user telecommunications revenues contribution base, it recognized that its method "will relieve wholesale carriers from contributing directly to the support mechanisms."[133] The Commission nonetheless adopted the end-user-revenues formula rather than the formula based on gross revenues net of payments to other carriers because it believed that the end-user-revenues formula would be more efficient and less economically distortive in application.[134] Not entirely coincidentally, this end-user-revenues formula also expressly eliminated the obligations of the LECs to contribute to universal service based on a significant amount of their interstate activity: their interstate access charge revenues. The ILECs did not at that time complain that such an exemption violated Section 254(d).

SBC and BellSouth misrepresent the record and the views of AT&T when they say that "AT&T and Ad Hoc have wisely recognized the legal deficiencies of the CoSUS proposal and

---

[131] *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776, 9205 (1997) ("*Universal Service First Report & Order*").

[132] *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 500 (¶ 820) (1996).

[133] *Universal Service First Report & Order*, 12 FCC Rcd at 9207.

withdrawn support for it…."[135] Neither AT&T nor Ad Hoc ever stated that they withdrew support for the CoSUS proposal on legal grounds. AT&T shifted to support for a numbers-based mechanism because it views such a mechanism, with an equal contribution per unit, as a more stable mechanism.

AT&T's proposal clearly satisfies the requirements of this harmonious reading of Section 254(d). AT&T's proposal is an equitable and nondiscriminatory formula that would be applied to all carriers that provide interstate service, and to other non-carrier providers of telecommunications. It will provide a specific, predictable and sufficient—in a word, *sustainable*—basis for federal universal service support. These are the core objectives of Section 254. All other arguments present only statutory red herrings that are divorced from the statute's language, aims and purpose.

2. Section 254(d), taken as a whole, cannot be read to require every telecommunications carrier to pay a monetary contribution to universal service.

Although some commenters continue to argue that a numbers-based (or CoSUS-type) mechanism would violate 254(d) because it would "exempt" broad classes of carriers from contribution,[136] these commenters are wrong on both the facts and the law.

On the facts, the Staff Study shows that all broad segments of carriers—including local, interexchange and CMRS—will continue to contribute to universal service under *any* of the proposed mechanisms outlined in the *SFNPRM.* The claim that there is an "IXC exemption" is a fictional scare tactic. Although the relative share of contribution as measured by carrier segment

[134] *Id.* at 9208.

[135] SBC/BellSouth Comments at 17.

[136] *See, e.g., id.* at 18.

does vary significantly, these variations are not statutorily significant. Variations in the magnitude of contributions by a carrier do not refute the fact that contributions are being paid.

Indeed, if anything, a numbers-based mechanism would likely expand the range of carriers that would be subject to universal service contribution, even beyond that of a CoSUS-type mechanism. Reseller IXCs, for example, often provide end user customers with personal 800 numbers in addition to switched toll service. These carriers would be required to contribute to universal service to the extent that their contribution would exceed the *de minimis* threshold.

As a matter of law, commenters arguing that the first sentence of Section 254(d) requires each and every carrier to pay some monetary contribution conflate plain meaning with literalism.[137] The words in a statute must be construed in light of their context,[138] and interpreted so as not to render other statutory terms superfluous.[139] If the first sentence of Section 254(d) were read literally to mandate a result, *i.e.*, that all carriers must make some monetary contribution to universal service, then the second sentence establishing the Commission's *de minimis* exemption authority would not exist. Clearly, Congress envisioned that some carriers providing interstate telecommunications would not contribute to the federal USF.

The literalist interpretation is inconsistent with the Commission's interpretation and application of Section 254(d) to date. As the Commission recognized when it adopted the existing end user interstate and international telecommunications revenue formula, wholesale carriers are not being assessed. If the literalist argument were correct, these carriers would also have been required to contribute to universal service.

---

[137] *Bell Atlantic v. FCC*, 131 F.3d 1044, 1045 (D.C. Cir. 1997).

[138] *See, e.g., Tyler v. Cain*, 533 U.S. 656, 662 (2001).

[139] *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 113 (2001).

Indeed, only a gross-revenues assessment or a value-added-tax-type assessment on gross revenues less payments to other telecommunications carriers could be sure to assess every carrier that provides interstate telecommunications services.[140] But the Commission has rejected gross revenues as not competitively neutral because of the problem of "counting revenues derived from the same service twice."[141] Thus, this mechanism would run afoul of the statute's requirement that contribution be "equitable and nondiscriminatory."

The Commission likewise previously rejected the VAT-type assessment, which it found to be even less efficient and more distortive than the existing mechanism.[142] There is no basis for changing that determination, nor for concluding that such a VAT-type mechanism would be any more competitively neutral in actual practice than the existing mechanism. Like the badly flawed existing mechanism, a VAT-type assessment would have to confront the discrimination issues presented by bundling, wireless contributions and pure-play international contributions, and would thus not be equitable and nondiscriminatory.

The Commission should not construe the first sentence of Section 254(d) in a manner that puts the words of that statute at war with itself. The literalist interpretation of the first sentence of Section 254(d) should therefore be rejected.

---

[140] While it is not clear whether SBC/BellSouth's proposal would in fact assess every carrier, that proposal clearly violates the statutory command that contribution be equitable and nondiscriminatory. As demonstrated in Section IV, *infra*, that proposal lacks even the pretense of competitive neutrality.

[141] *Universal Service First Report & Order*, 12 FCC Rcd at 9207.

[142] *Id.* at 9207-08.

3. The requirement that contributions be "equitable and nondiscriminatory" mandates competitive neutrality, not reliance on interstate revenues or "interstate activity."

The Commission has repeatedly recognized that competitive neutrality is the principle that must guide its universal service contribution mechanism decisions.[143] It should continue to be guided by the goal of competitive neutrality, and ignore those commenters who self-interestedly argue that interstate revenues or activities are more appropriate benchmarks.

<u>a.</u> <u>Parties acknowledge that competitive neutrality is the key to an "equitable and nondiscriminatory" contribution mechanism.</u>

A wide range of parties acknowledge that competitive neutrality is the touchstone of an "equitable and nondiscriminatory" contribution mechanism, although there is disagreement over which mechanisms are competitively neutral.[144] AT&T believes that competitive neutrality must be judged from the perspective of the consumer making the purchasing decisions. If two competitors' offerings of the same service or package of services result in disparate universal service assessments, then the mechanism is not competitively neutral and cannot be "equitable and nondiscriminatory."

No standard other than competitive neutrality makes sense for giving meaning and content to the statute's requirement that contributions be "equitable and nondiscriminatory." The requirement that contributions be "nondiscriminatory" clearly mandates that similarly situated

---

[143] *See id.* at 8801 (¶ 48) ("[C]ompetitive neutrality is consistent with … the explicit requirement of equitable and nondiscriminatory contributions."); *id.* at 9206 (¶ 843) ("We agree with the Joint Board's recommendation that we must assess contributions in a manner that … is competitively neutral ….").

[144] *See, e.g.*, Arch Wireless Comments at 4 (arguing that the modified revenues-based mechanism *is* "competitively neutral"); SBC/BellSouth Comments at 8 (arguing that the modified revenues-based mechanism is *not* "competitively neutral"); WorldCom Comments at 18 (arguing that connections-based mechanisms *are* "competitively neutral"); Nextel Comments at 6 (arguing that connections-based mechanisms are *not* "competitively neutral").

parties providing similar services be treated in the same manner, rather than a different manner, as occurs today as between wireless and wireline long distance or between pure-play and non-pure-play international carriers.

The requirement that contributions be "equitable" also underscores the importance of competitive neutrality. A contribution mechanism cannot be "equitable" if it favors services provided over wireless networks, for example, at the expense of services provided over wireline networks. The Commission should examine whether a contribution is "equitable," *i.e.*, whether it achieves "fairness in the allocation of contribution duties,"[145] according to whether the end user customer pays the same amount for the same service without regard to service configuration or carrier identity.

b. "Equitable and nondiscriminatory" does not mean "revenues-based."

Some parties argue that, to be "equitable and nondiscriminatory," universal service contributions must be assessed according to relative interstate revenue.[146] While that is the way contributions have been assessed historically, the statute does not compel such a result, especially where doing so is blatantly discriminatory, as under the existing mechanism.

It is indisputable that the word "revenue" does not appear in Section 254(d). Nowhere does Section 254 explicitly or implicitly require use of interstate revenues as the contribution mechanism. Like other possible means of contribution, interstate revenues are neither required nor banned; the only question is whether they provide an equitable and nondiscriminatory mechanism.

---

145 *TOPUC I*, 183 F.3d at 434.

146 *See* SBC/BellSouth Comments at 15-16; NRTA/OPASTCO Comments at 4-5; USTA Comments at 4-5.

There is no reason to read "equitable and nondiscriminatory" to insert the word "revenue" into the statute. If Congress had wished to specify that contributions must be based on revenues, it could have done so. It did not, and thus the Commission is not compelled by the plain language of the statute to adopt such a crabbed interpretation of "equitable and nondiscriminatory."

c. The requirement that contribution be "equitable and nondiscriminatory" does not mandate contribution based on "interstate activity."

Contrary to the views of some commenters,[147] the express language of Section 254(d) does not require that contributions be based on "interstate activity," and there is no basis for reading into Section 254(d) a requirement that contributions track "interstate activities." The word "activities" appears only in the second sentence of Section 254(d), which reads:

> The Commission may exempt a carrier or class of carriers from this requirement [to contribute to universal service on an equitable and nondiscriminatory basis] if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and enhancement of universal service would be *de minimis*.[148]

Notably, this provision describes a *de minimis* "contribution," and not *de minimis* "activities." Nor does it refer to "interstate activities;" it contains no jurisdictional reference at all.

Properly read, all this second sentence of Section 254(d) provides is that, if the FCC's equitable and nondiscriminatory formula for universal service contributions yields a *de minimis* amount of contribution for a particular carrier, the Commission may exempt that carrier from contribution. The "activities" that must be limited are those measured by the FCC's contribution formula, without any limitation on or specifications of the types of activities that the

[147] *See, e.g.*, Consumers Union, *et al.* Comments at 13.

Commission's formula must measure. Providing PSTN addresses to users is one measure of "activity," as is providing special access and private line connections.

As discussed in Section III.C.2, *supra*, if the Act truly compelled assessments based on a measurement of "interstate activities," it is unlikely that any contribution mechanism other than gross revenues or gross revenues net of payments to other carriers would meet such a requirement. Indeed, if "interstate activities" were required to be assessed, LECs should never have been exempted from USF contribution assessment based on their interstate access charge revenues and interstate universal service support, both of which are clearly "interstate activities." However, neither of these revenue sources is subject to universal service contribution, even though either may be a substantial portion of total revenues for some LECs.

<u>d.</u> <u>"Segment burden" is not a relevant measure of "equity."</u>

Finally, some parties appear to argue that the Commission should consider relative industry segment burden in determining whether a mechanism is "equitable."[149] The very concept of "segment burden" is ambiguous at best, especially in light of the evolving nature of the industry as the historic regulatory boundaries are abrogated. The Staff Study, for example, attempts to categorize contributions into categories such as "IXC," "LEC" and "CMRS."[150] This effort ignores the plain fact that actual carriers provide a mix of these services. For example, Verizon (not including Verizon Wireless) is both a LEC and an IXC under the Staff Study, as is AT&T. TNS data now show that 27 percent of households receive their local and long distance service from the same provider—a provider that clearly is operating both as a "LEC" and an

[148] 47 U.S.C. § 254(d) (emphasis added).

[149] *See, e.g.*, Verizon Wireless Comments at 3.

[150] *See* Staff Study at 5.

"IXC."[151] Moreover, that percentage is rapidly growing, such that the distinction between an "IXC" and a "LEC" is rapidly being rendered meaningless. And, of course, CMRS carriers compete directly both with wireline local services and wireline long distance, as well as providing services that are complements to both.

No principled basis exists on which to judge a segment's burden to be "fair" or "equitable," except to ensure that contribution is competitively neutral. As these USF contributions are ultimately recovered from end users, the Commission should be less concerned with "segment burden" and more concerned with the impact of its contribution mechanism on consumers and on the competition between similarly situated service providers that serve those consumers.

IV. THE MODIFIED SBC/BELLSOUTH PROPOSAL IS BLATANTLY DISCRIMINATORY.

SBC and BellSouth assert that their modified proposal is "competitively neutral" and "equitable and nondiscriminatory."[152] However, their modified proposal is far from competitively neutral and is, in fact, highly competitively skewed toward the bundled local and long distance products that SBC and BellSouth are rolling out wherever they have received Section 271 approvals. SBC and BellSouth have constructed a proposed universal service contribution mechanism that would give high-volume interstate long distance customers a substantial incentive to select SBC's and BellSouth's bundled products, rather than purchasing long distance services from an interexchange carrier that is not providing the end user's switched local service. Such a proposal is blatantly unlawful and cannot even purport to meet Section 254(e)'s requirement that contribution be on an "equitable and nondiscriminatory basis."

---

[151] *See* Exhibit 2.

SBC and BellSouth now apparently recognize that their initial proposal to "split" a connection contribution between the local connection provider and the provider of "interstate transport" creates significant and discriminatory operational implementation problems. As AT&T, Sprint and WorldCom all described, an interexchange carrier must rely on the LEC for timely and accurate information regarding presubsciption.[153] When the underlying information from the LEC is inaccurate or untimely, an interexchange carrier lacks the information it would need to calculate and pay its "split" of a per connection assessment.[154] These informational and operational problems render the "split-the-fee" approach not competitively neutral and therefore discriminatory in actual application.[155]

Recognizing this substantial infirmity of their initial proposal, SBC and BellSouth now propose a variation. In their variation, a carrier that provides both the switched local connection and presubscribed long distance service would be assessed a full connection fee (which the Staff Study estimates would be approximately $1.42).[156] When the end user selects a presubscribed long distance carrier that is not also the carrier providing switched local service, however, the switched local connection provider will be assessed one half of a connection fee (approximately $0.71, according to the Staff Study), and the carrier providing switched long distance service "will be assessed on interstate long distance service revenues generated by this category of end user."[157] The percentage revenue assessment would be based on the total

---

[152] SBC/BellSouth Comments at 9, 14.

[153] AT&T Comments at 50-53; Sprint Comments at 12-14; WorldCom Comments at 38-42.

[154] AT&T Comments at 51-52; Sprint Comments at 12-14; WorldCom Comments at 38-42.

[155] AT&T Comments at 50-53; Sprint Comments at 12-14; WorldCom Comments at 38-42.

[156] SBC/BellSouth Comments at 9.

[157] *Id.* at 9-10.

residual created by the half of a connection fee that was not assessed on the customers of standalone long distance service as a per connection fee.[158] SBC and BellSouth argue that this mechanism would "maintain competitive parity" because providers of bundled service and providers of standalone services pay the same amounts in aggregate.[159]

The artifice of competitive neutrality SBC and BellSouth attempt to create is nothing more than smoke and mirrors. When their proposal is evaluated from the standpoint of the purchaser—as necessary for any true assessment of competitive neutrality—it becomes apparent that the SBC/BellSouth proposal is designed to push high-volume interstate long distance customers toward their bundled service offerings, and away from the competing offerings of standalone long distance providers. SBC/BellSouth have created a proposal that gives them an enormous competitive advantage when competing for these attractive customers, an advantage that would stem *solely* from the USF contribution mechanism.

Take, for example, a customer who makes $1,000 of interstate long distance calls per month with three telephone lines that are presubscribed to an interexchange carrier. If the customer is an SBC customer for both the local and interstate long distance services, that customer would be assessed, according to the Staff Study, $0.71 by SBC and $0.71 by its presubscribed long distance carrier (assuming no allowances for other contribution-related expenses or shortfalls in contribution recovery) for each line, for a total of $4.26 ($1.42 times 3) in USF contribution charges. By contrast, if the customer uses SBC for local and AT&T for long distance, then assuming a residual revenues-based contribution factor for standalone long

---

[158] *Id.*

[159] *See id.* at 11.

distance of 4.5 percent,[160] the customer will pay SBC $2.13 ($0.71 times 3) in universal service contribution, and it will pay AT&T $45 ($1000 times 4.5 percent) in universal service contribution, for a total of $47.13. *That is a ten-fold increase in universal service contributions.* A system that creates such a dramatic disparity in contribution fees based solely on whether a customer buys its long distance service separately from or bundled with local service is the antithesis of competitive neutrality or nondiscrimination.

This gross discrimination does not exist just between those wireline providers that bundle local and long distance and those wireline providers that sell standalone interstate long distance, but also between CMRS providers and providers of standalone interstate long distance. SBC and BellSouth's Cingular Wireless joint venture would, in the example above, be assessed $1.42 for each of three wireless handsets, for a total of $4.26, like the bundled SBC local/long distance product. By comparison, the competing standalone wireline long distance provider would still be assessed $47.13. SBC and BellSouth's proposal is egregiously self-serving, tailored to maximize an unfair, universal service contribution-based advantage in competing for high-volume interstate customers.

Sprint also pointed out the competitive inequity of the SBC/BellSouth modified proposal. As Sprint stated, "any revenue-based assessment on carriers that provide transport only will create a disincentive for high-volume customers to use them because they will be able to determine the breakeven point between the connection-based charge applied by the access and transport carriers and the transport-only carriers' revenue-based charge. Thus, non-LEC transport providers would be placed at a substantial competitive disadvantage when competing

[160] For simplicity of illustration, we have used 4.5 percent, which is a little under half of the current 9.1 percent contribution factor.

against carriers that provide both local and long distance services."[161] Telstar similarly points to the competitive inequity of charging the SBC or BellSouth local/long distance customer a single, flat-rate USF assessment if the customer makes all interstate long distance calls over the LEC-affiliated presubscribed carrier, but charging a revenues-based surcharge if the customer elects to use dial-around or prepaid calling cards for a portion of their calling.[162]

Assessing all "interstate transport" providers on a revenue basis without regard to vertical integration is in no way an adequate alternative.[163] Notably, SBC and BellSouth do not even support such a plan. More critically, as AT&T pointed out in its initial comments, assessing all "interstate transport" providers on a revenues basis would not cure the fundamental discrimination in the existing system created by the wireless "safe harbor." When a companywide proxy is applied—as occurs under the wireless safe harbor to determine the wireless carrier's interstate allocated revenue—incremental revenue is underallocated to interstate and thus exempted from universal service contribution. In addition, assessing all "interstate transport" providers on the basis of revenues would continue to embroil the Commission in difficult questions regarding the proper application of the Act's definitions of "telecommunications services" and "information services" to some or all forms of VoIP.

Finally, retaining a revenues-based contribution for long distance service under any variation of the SBC/BellSouth proposal would be an anti-universal service policy. As previously discussed, revenues-based contributions, which are then recovered in revenues-based recovery fees, impose the greatest financial hardship on low-income, high-volume interstate long

---

161 Sprint Comments at 15; *accord* AT&T Comments at 53.

162 Telstar Comments at 12.

163 *See SFNPRM* at ¶ 95.

distance users—those consumers most likely to be subject to disconnection. The harm that the SBC/BellSouth proposal would inflict on these most vulnerable and financially strapped consumers far outweighs the benefits of a less-than-30-cent reduction in the universal service assessment to a low-income customer who makes absolutely no interstate long distance calls.[164]

The SBC/BellSouth approach is badly flawed, no matter how it is implemented. All of its permutations are not competitively neutral, and therefore not "equitable and nondiscriminatory." The SBC/BellSouth approach must therefore be rejected under the clear and unambiguous terms of Section 254(e).

V. CONCLUSION.

Accordingly, the Commission should move quickly to adopt AT&T's numbers-based assessment mechanism as the only equitable, nondiscriminatory, and sustainable universal service funding option.

Respectfully submitted,

AT&T Corp.

By: /s/

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T CORP.
One AT&T Way, Room 3A229
Bedminster, New Jersey 07921
(908) 532-1846

John T. Nakahata
Michael G. Grable
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Suite 1200
Washington, DC 20036
(202) 730-1345

April 18, 2003

[164] \$0.98 per number under the AT&T Proposal minus \$0.71 LEC assessment under the SBC/BellSouth Proposal=\$0.27.